SUPREME COURT OF THE UNITED STATES

WAYNE HUNT *v.* NEW YORK

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

No. 91–5952. Decided November 12, 1991

The petition for a writ of certiorari is denied.

JUSTICE WHITE, dissenting.

A key question in this case is whether the Double Jeopardy Clause applies to trial-like sentence enhancement proceedings in non-capital cases. In *Bullington* v. *Missouri*, 451 U. S. 430 (1981), this Court held that the Clause was implicated in such proceedings in the capital context. We expressly declined to address the applicability of the Clause to non-capital sentence enhancement proceedings in *Lockhart* v. *Nelson*, 488 U. S. 33, 37 n. 6 (1988). The New York Court of Appeals in this case held that Double Jeopardy Clause principles did not preclude the State from seeking a second sentence enhancement after it failed to establish the requisite statutory predicate for enhancement in the first proceeding. *State* v. *Hunt*, 78 N. Y. 2d 932, 933, ___ N. E. 2d ___, ___ (1991).

Other courts take the contrary view. See, *e. g.*, *Durosko* v. *Lewis*, 882 F. 2d 357, 359 (CA9 1989), cert. denied, 110 S. Ct. 1930 (1990) and *Bullard* v. *Estelle*, 665 F. 2d 1347, 1361 (CA5 1982), vacated and remanded on other grounds, 459 U. S. 1139 (1983), both cases holding that Double Jeopardy analysis applies in sentence enhancement proceedings.

Because this division in authority should be resolved, I believe the Court should grant certiorari.